

**In re: SAULSBURY ENTERPRISES, AN UNINCORPORATED
ASSOCIATION; AND ROBERT J. SAULSBURY, AN INDIVIDUAL.
AMAA Docket No. 94-0002.
Ruling Denying Respondents' Motion to Dismiss filed February 14, 2000.**

Colleen A. Carroll, for Complainant.
Brian C. Leighton, Fresno, California, for Respondents.
Ruling issued by William G. Jenson, Judicial Officer.

The Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], instituted this proceeding under the Agricultural Marketing Agreement Act of 1937, as amended [hereinafter the AMAA]; the Marketing Order Regulating the Handling of Raisins Produced From Grapes Grown in California [hereinafter the Raisin Order] (7 C.F.R. pt. 989); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary (7 C.F.R. §§ 1.130-.151) by filing a Complaint on May 23, 1994. The Complaint alleges that Saulsbury Enterprises and Robert J. Saulsbury [hereinafter Respondents] violated the Raisin Order.

On June 13, 1994, Respondents filed an Answer denying the material allegations of the Complaint. After a hearing, Administrative Law Judge James W. Hunt [hereinafter the ALJ], issued an initial decision in which the ALJ concluded that Respondents violated the Raisin Order and assessed Respondents, jointly and severally, a \$3,000 civil penalty. Complainant appealed to the Judicial Officer, and on May 7, 1996, I issued a Decision and Order concluding that Respondents violated the Raisin Order, assessing Respondents, jointly and severally, a \$219,000 civil penalty, and ordering Respondents to pay the Raisin Administrative Committee \$1,673.30 in assessments. *In re Saulsbury Enterprises*, 55 Agric. Dec. 6 (1996), *aff'd in part, denied in part & remanded*, No. CV-F-97-5136 REC (E.D. Cal. June 29, 1999).

Respondents filed a Complaint for Review of the May 7, 1996, Decision and Order in the United States District Court for the Eastern District of California. Thereafter, the parties filed cross-motions for summary judgment, which the Court granted in part and denied in part. *Saulsbury Enterprises v. United States Dep't of Agric.*, No. CV-F-97-5136 REC (E.D. Cal. June 29, 1999) (Order Granting in Part and Denying in Part Cross-Motions for Summary Judgment and Remanding Matter to USDA).

The Court affirmed the May 7, 1996, Decision and Order, with the exception of \$14,000 in civil penalties.¹ However, the Court concluded that the civil penalty

¹In *In re Saulsbury Enterprises*, *supra*, I found that Respondents failed to submit 40 reports to the Raisin Administrative Committee. Fourteen of these reports concern off-grade raisins. The Court concluded that I could not assess a civil penalty against Respondents for failing to submit reports concerning off-grade raisins, given my conclusion that Respondents' raisins were standard raisins.

provision in section 8c(14)(B) of the AMAA (7 U.S.C. § 608c(14)(B)) is subject to the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and remanded the proceeding to the United States Department of Agriculture [hereinafter USDA] for findings concerning whether the civil penalty assessed in the May 7, 1996, Decision and Order, as modified by the Court, is excessive within the meaning of the Excessive Fines Clause. The Court states that it retains jurisdiction of the action pending USDA findings and instructs that the parties renew their motions for summary judgment before the Court on the issue of whether the civil penalty assessed against Respondents is or is not excessive within the meaning of the Excessive Fines Clause, once the findings are final. *Saulsbury Enterprises v. United States Dep't of Agric.*, *supra*, slip op. at 1-2, 33-41, 52.

The parties filed briefs concerning whether the \$205,000 civil penalty assessed against Respondents is or is not excessive within the meaning of the Excessive Fines Clause of the Eighth Amendment, and on December 7, 1999, the Hearing Clerk transmitted the record of the proceeding to me for a decision on remand.

On January 5, 2000, Respondents filed Declaration of Brian C. Leighton, Attorney for Respondents, Re Death of The Respondent [hereinafter Motion to Dismiss], stating that Respondent Robert J. Saulsbury died on January 3, 2000, and requesting that the proceeding be dismissed. On February 9, 2000, Complainant filed Complainant's Response to Respondents' Motion to Dismiss opposing Respondents' Motion to Dismiss, and on February 11, 2000, the Hearing Clerk transmitted the record of the proceeding to me for a ruling on Respondents' Motion to Dismiss.

The United States District Court for the Eastern District of California remanded this proceeding to me for findings concerning whether the civil penalty assessed in the May 7, 1996, Decision and Order, as modified by the Court, is excessive within the meaning of the Excessive Fines Clause. The Court explicitly states that it retains jurisdiction of the action pending USDA findings and instructs that the parties renew their motions for summary judgment before the Court on the issue of whether the civil penalty assessed against Respondents is or is not excessive within the meaning of the Excessive Fines Clause, once the findings are final. Therefore, I find that I do not have jurisdiction to dismiss this proceeding.

If Respondents seek to dismiss this proceeding, they should file their Motion to Dismiss in the United States District Court for the Eastern District of California, which has retained jurisdiction over this proceeding and has remanded the proceeding to me for the limited purpose of issuing a decision regarding whether the civil penalty assessed in the May 7, 1996, Decision and Order, as modified by the Court, is excessive within the meaning of the Excessive Fines Clause.

